The original order for discharge was therefore varied by the addition of the *proviso*. At the same time the order declared that the interpretation placed upon the order of discharge by the Official Assignee was correct. That being so no variation was strictly required, the *proviso* being merely added *ex abundanti cautela*.

The applicant appealed to the Court of Appeal which dismissed the appeal, holding that in effect Gordon-Smith, J. had merely interpreted the former order. If, however, there was a variation the learned Judge was entitled to make it.

It has been argued that the judgment of the Court of Appeal is final as it finally disposes of the rights of the parties (*Ramchand Manjimal v. Goverdhandas Vishhindas Ratanchand*[2]). The order of the Court of Appeal merely confirmed the order of Gordon-Smith, J. If the order of Gordon-Smith, J. can be varied it would appear to follow that the judgment of the Court of Appeal does not finally dispose of anything except the sum of $950.00 which was refunded by the Official Assignee. This sum is far below the limit of £500 referred to in Rule 2 (a) of the Order in Council.

In the argument before Gordon-Smith, J. it was never suggested that the Court had no power to vary an order for discharge under the provisions of section 85 (i). If there were any doubt on the point it has been settled by the Court of Appeal in England in the case of *In re a Debtor*[1], and the following passages from the judgment of the Master of the Rolls at page 500 may be quoted:—

> "It is admitted that in the order of discharge.... it is competent to the Court to insert a condition.... which will continue to operate after the discharge has become effective. That is conceded. It is also conceded that in a case where that has been done the Court under s. 108 (corresponding to F.M.S. sec. 85) retains its jurisdiction to vary any such condition even though the discharge has become effective...."

> "It could vary such a condition by reducing the amount if it became a hardship on the bankrupt to pay it; similarly if it can do that it must have the power to raise the amount if owing to a change in the bankrupt's circumstances, it is right and proper that he should make a larger payment".

On the appeal to the Court of Appeal it was argued that an application to vary the order of discharge could only be made by the debtor under the provisions of section 28 (ii) of the Enactment, and that the Official Assignee has no *locus standi* in the matter reliance being placed on a *dictum* of the Court in *In re Roberts*[3]. If, however, that case is examined it will be found that the application was originally made by the trustee to sanction a payment by a third party in satisfaction of the balance of the judgment debt. The bankrupt appeared by counsel on the application and the Court decided that the application should be treated as having been made by the bankrupt. These were the circumstances under which the Court decided not also to hear the Trustee. The matter is not referred to in the judgment delivered by the Court and the case is not an authority for the proposition that the Official Assignee cannot apply under section 85 (i) (section 108 (i) of the English Act) under which the powers of the Court according to *Williams* on Bankruptcy, 15th Edition, page 442, are almost without limit. If there is any conflict between *In re Roberts*[3] and *In re a Debtor*[1] I have no hesitation in following the more recent decision. The result is, therefore, the order of Gordon-Smith, J. may be varied at any time either on the application of the debtor under section 28 (ii), or on the application of the Official Assignee under section 85 (i). An order which is liable to be so varied cannot possibly be a final order as it does not finally dispose of the rights of the parties. The judgment of the Court of Appeal merely confirmed the order of Gordon-Smith, J. and its effect would be nugatory if that order were "reviewed, rescinded or varied".

There is no question of "great general or public importance" involved. The application, therefore, must be dismissed with costs.

Gordon-Smith, J.—I concur and having nothing to add

Cussen, J.—I have had the opportunity of reading the Judgment which has been delivered by the Learned President of the Court, and I am in agreement with and concur in that Judgment, and the Order therein.

The Appeal is dismissed with costs.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J., TERRELL, J.A. & CUSSEN, J.

June 25, 1940.

MOHAMED RAMLY BIN HAJI RASIP

v.

PUBLIC PROSECUTOR.

[PAHANG MAGISTRATE'S CRIMINAL APPEAL No. 1 of 1940]

Penal Code, Ss. 161, 165—agreeing to accept and accepting illegal gratification—joinder of charges—

legality of—acts charged forming same transaction—Criminal Procedure Code, S. 165 (i).

The accused was charged under Section 161 of the Penal Code with (1) agreeing to accept illegal gratification from the Pahang Lin Siong Motor Company on a specified date and (2) accepting illegal gratification from the same Company on another date. He was also charged in the alternative under Section 165 of the Code with (1) agreeing as a public servant to accept from the Company a stated sum within a period exceeding one year and (2) accepting a stated sum from an officer of the Company on a specified date.

Held, that as the accused's acts were so connected together as to form the same transaction, the charges were rightly joined under Section 165 (i) of the Criminal Procedure Code.

Cases referred to:—

(1) *Lim Tian Chye v. Public Prosecutor,* 1 F.M.S.L.R. 228.

(2) *Subramania Iyer v. King Emperor,* 28 Indian Appeals 257.

CRIMINAL APPEAL.

Salt and *Benjamin* for Appellant.

Draper, Deputy Public Prosecutor, for Public Prosecutor (Respondent).

The judgment of the Court of Appeal **(Poyser, C.J., Terrell, J.A. & Cussen, J.)** was as follows:—

We dismissed this appeal, and at the conclusion of the arguments stated that we would give a written judgment on the points of law raised.

The appellant was convicted on the following charges:—

"First, That you at Kuala Lipis in the State of Pahang on or about 8th February 1938 being a public servant namely a police officer agreed to accept from the Pahang Lin Siong Motor Company Ltd., a gratification other than legal remuneration as a motive for forbearing to do an official act and thereby committed an offence punishable under section 161 of the Penal Code.

"Secondly, That you at Kuala Lipis in the State of Pahang on or about 15th February 1939 being a public servant namely a police officer accepted from the Pahang Lin Siong Motor Company Ltd., a gratification other than legal remuneration as a motive for forbearing to do an official act and thereby committed an offence punishable under section 161 of the Penal Code".

He was sentenced to twelve months simple imprisonment on each charge, the sentences to run concurrently.

There were also two alternative charges, viz:—

"First, That you between February 1st 1938 and August 3rd 1939, being a public servant agreed to accept for yourself a valuable thing to wit sums of money amounting to $630.00 without consideration from the Pahang Lin Siong Motor Company Ltd., whom you knew to have been or to be likely to be concerned in the official functions of yourself as Officer in Charge of Police District, Lipis, and of the members of the police force in the said District subordinate to you and thereby committed an offence under section 165 of the Penal Code".

"Secondly, That you, on or about the 15th February 1939, at Kuala Lipis, being a public servant namely a police officer (officer in charge of Police District, Lipis) accepted for yourself a valuable thing to wit a sum of $40.00 without consideration from one S. Suppiah Managing Director of the Pahang Lin Siong Motor Company Ltd., whom you then knew to be likely to be concerned with the official functions of yourself as such Officer in Charge of Police District, Lipis, and of the public servants being members of the Police force of the said District subordinate to you, and that you thereby committed an offence punishable under section 165 of the Penal Code".

In view of the appellant's conviction on the first two charges, the Judge made no finding on these alternative charges.

The following were the appellant's main grounds of appeal:—

2. "Charge headed 'alternatively first' is bad in law:
   (a) for multiplicity;
   (b) for it covers a period exceeding 12 months.
3. The charges are bad in law for uncertainty, in as much as it is uncertain whether the charges under 'alternatively' are alternate to the preceding charges respectively, or to the second charge only, or that the charge headed 'alternatively first' is an alternative to the preceding charge and that the charge following is a charge standing alone".

Mr. Salt, on behalf of the appellant, argued that the first alternative charge referred to a transaction distinct from the transaction referred to in the first charge, and was therefore bad, as in effect he was charged that he either did an act on one day at one place or another act, constituting a different offence, on another day at another place.

In support of this argument he cited *Sohoni,* 13th edition page 584, and further argued that it was not an irregularity but an illegality, and that the conviction must be set aside having regard to the decision in *Subramania Iyer v. King Emperor,*(2). It is quite clear in our opinion that the first alternative charge was alternative to the first charge. The difference in the dates appears to be due to the fact that in the original charge no date was mentioned, and when the first charge was amended by the insertion of a date, a different date was inserted in the alternative charge, possibly by inadvertence.

We do not, however, agree with Mr. Salt that these charges must be regarded as charges coming under the provisions of section 164 (i) of the Criminal Procedure Code, i.e. charges of different offences of the same kind, and therefore bad as they were alleged to extend over a space of twelve months. In our opinion the appellant's acts come within the scope of section 165 (i), i.e. one series of acts so connected together as to form the same transaction, *viz:* an agreement to

accept and acceptance of bribes, and in support of this proposition we would refer to the case of *Lim Tian Chye v. Public Prosecutor,*[1]. In that case "the appellant was charged under sections 467 and 471 of the Penal Code with three offences of fraudulently using as genuine forged delivery orders in respect of three articles. He was also charged under section 408 of the Penal Code with three offences of criminal breach of trust as a servant and under section 418 of the Penal Code with three offences of cheating in respect of the same three articles".

It was held by Innes and Farrer-Manby, JJ.:—

> "That all the acts dealt with in the charges formed one transaction within the meaning of section 163 (i) (now 165 (i)) of the Criminal Procedure Code".

The following passage occurs in the judgment of Innes, J.C.:—

> "It seems to me that the series of acts enquired into though separated by short intervals of time, may well be held to have formed one transaction in the sense that they were connected through being done with one specific criminal intent for the furtherance of a continuous plot. Indeed the acts charged as cheating and criminal breach of trust had to be carried out before the employment of the forged delivery orders could be effectually resorted to".

In this case, the appellant's acts were also all connected and done with one specific criminal intent, viz: the agreement to accept and acceptance of bribes from the Pahang Lin Siong Motor Company Limited.

There are, therefore, no grounds in law for setting aside the conviction.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]
HORNE, J.
November 11, 1940.

WONG YEW ..... **Applicant.**

[ORIGINATING SUMMONS No. 62 of 1940]

Land Code S. 108—Person registered as proprietor under S. 108 entitled to the issue of a fresh document of title.

The applicant was the purchaser of certain lands sold under Order of Court. The order confirming the sale and vesting the title in the purchaser was duly made order under S. 329 of the Civil Procedure Code. The applicant presented this order as required by S. 108 of the Land Code and the same was registered. It is not compulsory in the case of a vesting order under S. 108 to produce the issue document of title before registration. The applicant therefore though the registered proprietor did not possess any issue document of title. He applied under S. 240 by way of Originating Summons, for an order that the Registrar of Titles should issue fresh documents of title for the land.

Held, that where a person has become a registered proprietor and by reason of the proper registering authority being compelled to register such person as proprietor without the delivery of the issue document of title that authority has power and if so requested by the proprietor is under the duty to issue to such proprietor a fresh document of title.

APPLICATION UNDER LAND CODE.

Applicant in person.

Horne, J.—The applicant Wong Yew of Seremban applies by an *ex parte* originating summons, which is headed "In the matter of an application under section 240 of the Land Code (Cap. 138)", and asks for an order that the Registrar of Titles do issue fresh documents of title for the lands held under Certificates of Title No. 2185 and No. 2186 for Lots No. 2753 and No. 2754 in Seremban upon the applicant paying all expenses therefor

The application was supported by an affidavit exhibiting certain correspondence and referring to Suit No. 2 of 1935, and from these documents the facts of the matter appear to be as follows:—

The Official Assignee of the moneylanding firm "T.S.N." of Penang, which was a general creditor of the defendants, obtained judgment against them viz. (1) T.N. Mootiah Chettiar, (2) T.S.R.M. Ramasamy Chettiar, (3) T.S.K. Ramasamy Chettiar, (4) T.S.K. Mootiah Chettiar, (5) T.S.M.R. Arunasalam Chettiar, (6) T.S.T.S. Nagappa Chettiar for $237,271.66 and costs on 26th April 1934 in Singapore. This judgment was the subject of the proceedings in this Court under the Judgments (Reciprocity) Enactment and was duly registered thereunder on 2nd December 1935. An application for execution was made on 2nd December 1936 and certain lands including Certificate of Title 2185 and Certificate of Title 2186 Seremban Town were attached. According to the abstract the registered proprietors were the six judgment debtors. Various proceedings followed and finally on 21st October 1939 sale of Certificate of Title 2185 and Certificate of Title 2186 and the other lands was ordered and the applicant became the purchaser on the 16th December 1939. The six judgment debtors throughout the proceedings in Negri Sembilan Suit (Foreign Judgment) No. 2 of 1935 have never appeared, service having been effected upon them in the State of Pudukotah, India. At time of sale the lands were unencumbered. On 17th January 1940 an order confirming the sale and vesting the title in the purchaser was duly made under section 329 of the Civil Procedure Code. The applicant duly presented this order as required by section 108 of the Land Code and the same was registered. The applicant then entered into correspondence with the Assistant Registrar, Supreme Court, with a view to obtaining the issue document of title but as the judgment executed was a general creditor's judgment